IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 8, 2008 Session

GENERAL MOTORS CORPORATION, ET AL. v. TENNESSEE MOTOR VEHICLE COMMISSION, ET AL.

Appeal from the Chancery Court for Davidson County
No. 07-262-I Claudia C. Bonnyman, Chancellor

No. M2008-00082-COA-R3-CV - Filed October 30, 2008

Carl Black Chevrolet ("Dealer") and General Motors Corporation ("GM") appeal from a trial court ruling that upheld a decision by the Tennessee Motor Vehicle Commission ("the Commission") forbidding GM from approving a proposed relocation of Dealer to Mt. Juliet from Nashville, and denying Dealer a license for the new location. The Commission had taken up the case in response to a petition filed by a competitor, Wilson County Motors, LLC ("Competitor"), which is located some 14 miles from Dealer's proposed relocation site in Mt. Juliet, but which counts Mt. Juliet as part of its "Area of Primary Responsibility," or "APR." Competitor's protest against GM's desire to approve the relocation was brought to the Commission's attention in accordance with Tenn. Code Ann. § 55-17-114(c)(20) (Supp. 2007). GM and Dealer argue that § 55-17-114(c)(20) does not apply to the relocation of an existing dealership. They also argue that the Commission erroneously assigned the burden of proof to them, rather than to Competitor. In addition, GM argues that the Commission misapplied § 55-17-114(c)(20) in various ways and "adopted an anticompetitive standard" in its ruling. We reject all of these arguments and, accordingly, affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, SP.J., joined.

Jeffrey J. Jones and J. Todd Kennard, Columbus, Ohio, and Barry Howard, Nashville, Tennessee, for the appellant, General Motors Corporation.

Gregory S. Reynolds and Timothy G. Harvey, Nashville, Tennessee, for the appellant, Carl Black Chevrolet.

Robert E. Cooper, Attorney General and Reporter, and Mary Ellen Knack, Senior Counsel, Office of the Attorney General, Tax Division, Nashville, Tennessee, for the appellee, Tennessee Motor Vehicle Commission.

James W. Cameron III and Robert Lee Baldridge IV, Nashville, Tennessee, for the appellee, Wilson County Motors, LLC.

OPINION

I.

This case grows out of an appeal of an administrative decision under the Uniform Administrative Procedures Act. Accordingly, the trial court's standard of review is governed by Tenn. Code Ann. § 4-5-322 (2005), and "[w]e use the same standard to review administrative decisions that trial courts use." ***Ware v. Greene***, 984 S.W.2d 610, 614 (Tenn. Ct. App. 1998). *See also* ***CF Industries v. Tennessee Public Service Commission***, 599 S.W.2d 536, 540 (Tenn. 1980). This means that we may reverse or modify the Commission's ruling only if

> the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
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> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
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> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.
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> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h).

As an initial matter, GM and Dealer claim that the Commission's action was, as the statute puts it, "[i]n violation of constitutional or statutory provisions" because the action was premised upon the applicability of Tenn. Code Ann. § 55-17-114(c)(20) to this case when, according to GM

and Dealer, that statute does not apply. We disagree. In reaching this conclusion, we rely on the basic rules of statutory construction. Many of these well-settled rules are aptly summarized in ***BellSouth Telecommunications, Inc. v. Greer***, 972 S.W.2d 663 (Tenn. Ct. App. 1997), which the trial court cited in reaching its decision herein. ***Bellsouth*** states:

> The search for the meaning of statutory language is a judicial function. Courts must ascertain and give the fullest possible effect to the statute without unduly restricting it or expanding it beyond its intended scope. At the same time, courts must avoid inquiring into the reasonableness of the statute or substituting their own policy judgments for those of the legislature.
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> When approaching statutory text, courts must also presume that the legislature says in a statute what it means and means in a statute what it says there. Accordingly, we must construe statutes as they are written, and our search for the meaning of statutory language must always begin with the statute itself.
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> Statutory terms draw their meaning from the context of the entire statute, and from the statute's general purpose. We give these words their natural and ordinary meaning, unless the legislature used them in a specialized, technical sense.

Id. at 672-73 (citations omitted). In addition, "we will not apply a particular interpretation to a statute if that interpretation would yield an absurd result." ***State v. Flemming***, 19 S.W.3d 195, 197 (Tenn. 2000).

A brief review of the subject statute, its broader context, and the pertinent facts of this case will elucidate why we decline to adopt the interpretation urged by GM and Dealer. Tenn. Code Ann. § 55-17-114(c)(20) is part of a larger statutory scheme governing the sale of motor vehicles in Tennessee. The first section in the "Motor Vehicle Sales Licenses" subchapter provides a useful summation of the scheme's overall purpose:

> The general assembly finds and declares that the distribution and/or sale of motor vehicles in the state of Tennessee vitally affects the general economy of the state and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and their representatives doing business in Tennessee in order to prevent frauds, impositions and other abuses upon its citizens.

Tenn. Code Ann. § 55-17-101 (2004). The particular statutory subsection at issue in this case, § 55-17-114(c)(20), was added in 1977 as part of a "comprehensive amendment" that, among other things, prohibited various "potential improper or unfair practices on the part of manufacturers against dealers, including . . . direct competition by a manufacturer with a franchised dealer, discrimination among franchisees and *the granting of additional competitive franchises in a market area previously franchised to existing dealers*." ***General Motors Corp. v. Capitol Chevrolet Co.***, 645 S.W.2d 230, 232 (Tenn. 1983) (emphasis added). The subject portion of the statute provides as follows:

> [T]he commission may deny an application for a license, or revoke or suspend the license of a manufacturer, distributor, distributor branch, factory branch or officer, agent or other representative thereof who has:
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> * * *
>
> Granted a competitive franchise in the relevant market area previously granted to another motor vehicle dealer. "Relevant market area," as used herein, means that area as described or defined in the then existing franchise or dealership of any dealer or dealers; provided, that if the manufacturer wishes to grant such a franchise to an independent dealer, or to grant an interest in a new dealership to an independent person in a bona fide relationship in which such person has made a sufficient investment subject to loss in such dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions, then the manufacturer shall give written notice to the existing dealer or dealers in the area, and the matter shall be submitted to the commission for final and binding action under the principles herein prescribed for a determination of the relevant market area, the adequacy of the servicing of the area by the existing dealer or dealers and the propriety of the granting of such additional dealerships. The complaint, whether filed by an existing dealer or upon motion of the commission, shall be filed within thirty (30) days of the receipt by affected dealers of notice as required herein, and if no protests are filed, the manufacturer may proceed to grant the additional franchise[.]

Tenn. Code Ann. § 55-17-114(c), (c)(20). GM and Dealer advance an interpretation of this text that is almost obsessively focused on the phrase "such additional dealerships." They argue that, where an already-franchised dealership merely wishes to *relocate*, it does not constitute an "additional dealership," and therefore § 55-17-114(c)(20) does not apply. However, reading the statute as a whole, and in its broader context, we believe it is quite clear that the appellants' reading is contrary to the plain meaning of the statute, as well as the legislature's intent.

In its brief, GM writes:

> On its face, the statute does not apply to a relocation. Simply put, no "additional dealership" is being established in this case. Carl Black Chevrolet, an existing dealer, is simply relocating. No one disputes that. There will be the exact same number of Chevrolet dealers after the relocation as before. The "additional" dealership statute does not apply here.
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> * * *
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> GM did not and will not grant any new "competitive franchise" if the relocation proceeds. Carl Black Chevrolet already has a "franchise" and will have the same "franchise" if the relocation is allowed to occur. It will simply operate at a different location.

(Formatting in original.) This argument focuses on individual words and phrases from the statute, at the expense of their contextual meaning. § 55-17-114(c)(20) is not directed at new "competitive franchise[s]" in general, but rather at new "competitive franchise[s] *in the relevant market area* previously granted to another motor vehicle dealer." (Emphasis added.) Likewise, it is obvious that the phrase "additional dealerships" (and the related phrase "additional franchise"), read in context, is intended to refer to "additional" franchised dealerships *within the relevant market area*. A dealership that relocates from one market to another market may not be an "additional dealership" on GM's nationwide or statewide list of franchisees, but it *is* an "additional dealership" on a list of franchisees within the market area in question. Since the statutory subsection at issue is entirely focused on the issue of intra-market competition, we believe this is what the phrase "such additional dealerships" refers to.

Accordingly, GM is missing the point when it notes that Dealer "already has a 'franchise' and will have the same 'franchise' if the relocation is allowed to occur," and that "[t]here will be the exact same number of Chevrolet dealers after the relocation as before." The pertinent question is not how many franchised dealers there are, in total, but rather how many franchised dealers are *in the relevant market area*. As Competitor's brief succinctly explains:

> In the simplest terms, prior to GM's notice letter there was only one Chevrolet franchise in the Wilson County APR; that Chevrolet dealer is Wilson County Motors [*i.e.*, Competitor]. If GM gets its way, then there will be two competing Chevrolet franchises located within the Wilson County APR.

By proposing to approve Dealer's "relocation" into Competitor's market area,[1] GM is attempting to achieve *precisely* the same result as "[g]rant[ing] a [new] competitive franchise in the relevant market area." Yet GM and Dealer argue that the rule does not apply because, technically, no new "franchise" is being "granted." If this logic were followed, a manufacturer could pursue the very same "potential improper or unfair practices" that the statute is designed to guard against, ***Capitol Chevrolet***, 645 S.W.2d at 232, by "relocating" a franchised dealership from anywhere in the United States into a competitive market area, then franchising a "new" dealership in the relocated dealer's now-vacant market area. We decline to give § 55-17-114(c)(20) such a hypertechnical, non-contextual reading as to allow this sort of evasion of its basic purpose. To do otherwise would yield an "absurd result." ***Flemming***, 19 S.W.3d at 197.

Furthermore, GM's frequent references to Dealer's "relocation" as a simple matter, unworthy of such regulatory concern – *e.g.*, Dealer "is simply relocating"; it "will simply operate at a different location"; it will merely have a new "address" – are likewise misguided. Dealer relocations are unquestionably regulated by the statutory scheme of which § 55-17-114(c)(20) is a part. A separate license is required for "each location and franchise." Tenn. Code Ann. § 55-17-110 (Supp. 2007). *See also* Tenn. Code. Ann. § 55-17-111(g)(4) (Supp. 2007) (licenses are non-transferable, and "a separate license shall be required for each separate place of business,"). Most importantly, Tenn. Code Ann. § 55-17-113 (2004) states:

> (a) The license issued to each motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch or automotive dismantler and recycler shall specify the location of the factory, dealership, office or branch.
>
> (b) Any motor vehicle dealer licensed hereunder shall promptly notify the commission of a change in ownership, location or franchise or any other matters the commission may require by rule. *If a dealership changes its location* entirely or in part or changes or adds to the dealer's franchise or line-makes, *a new license must be applied for as in any original application*.

(Emphasis added.) The *very next section* of the statutory scheme is the one at issue herein, § 55-17-114, and it lists the many circumstances under which the Commission may deny license applications. One of those circumstances is the very situation which has occurred here, where a manufacturer planning to put a franchise in a competitive market area gives the required "written notice to the existing dealer or dealers in the area," and one of those dealers files an objection, leading to "final and binding action" by the Commission. It makes little sense for GM and Dealer to argue that the omission of the word "relocation" from § 55-17-114(c)(20) somehow exempts them from the ambit of that statutory subsection, when the immediately-preceding section states that a

[1] GM and Dealer dispute the Commission's analysis of the market area, but we find that the Commission acted within its discretion on this point. We will briefly address this issue later in this opinion.

relocating dealer must apply for a new license "as in any original application," and the section at issue then proceeds to list the various circumstances – including this very circumstance – under which such a license application may be denied.

Pryor Oldsmobile/GMC Co., Inc. v. Tennessee Motor Vehicle Com'n, 1988 WL 47020 (Tenn. Ct. App. M.S., filed May 13, 1988), cited by GM and Dealer as authority for the proposition that § 55-17-114(c)(20) does not apply to this case, is readily distinguishable. The court in ***Pryor*** reversed the Commission's denial of a car dealership's application for "a license to sell cars in a shopping mall," one-and-a-half miles away from its main location. ***Id.*** at *1. The Commission's decision was based upon the dealer's "failure to give written notice to the three other Oldsmobile dealers in the Memphis market area" – all of which were, the court found, "in entirely different parts of town" from the proposed mall location. ***Id.*** at *1, *2. The trial court overturned the Commission's decision because "the branch showroom was not a 'competitive franchise' as defined in § 55-17-102(c)(10)." ***Id.*** at *1. The Court of Appeals affirmed, and added that § 55-17-114(c)(20) was also inapplicable because the defendant dealer was not a "manufacturer[], distributor[], distributor branch[or] factory branch[]" and was not acting as an "officer, agent or other representative thereof." ***Id.*** at *2.

There are several reasons ***Pryor*** is inapposite. Firstly, neither ***Pryor*** nor a subsequent opinion in the same dispute, ***Pryor Oldsmobile/GMC Co., Inc. v. Tennessee Motor Vehicle Com'n***, 803 S.W.2d 227 (Tenn. Ct. App. 1990), stand for the proposition that § 55-17-114(c)(20) is inapplicable to relocation cases.[2] Relocation was not at issue in those cases; the dealer in ***Pryor*** wished to open a new branch while keeping the old location open. Secondly, none of the key facts in ***Pryor*** are present in the instant case.[3] The affected dealer herein is not in an "entirely different part[] of town"; the proposed relocation site would not be a mere "branch showroom," but rather a true "competitive franchise"; and the manufacturer, GM, is a party to this case, rather than being a mere bystander to independent action by the dealership.

For all of these reasons, we conclude that the intent of the legislature, as expressed through the plain meaning of the statute, viewed properly in context, indicates that Tenn. Code Ann. §

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[2] GM notes that Judge, now Justice, Koch made a statement in his concurrence in the second ***Pryor*** case, summarizing the first ***Pryor*** case as follows: "the Chancery Court for Davidson County reversed the Commission, finding that notice to competitors was required *only when a new competitive franchise was being established*. This court affirmed the trial court." 803 S.W.2d at 232 (emphasis added). GM emphasizes the words "new" and "established," but in fact, the key issue in ***Pryor*** was whether the mall showroom was a "competitive franchise," something that is not disputed in this case. Both ***Pryor*** opinions are silent on the determinative issues in this case. Moreover, it is hardly self-evident that Dealer herein, if relocated, would not constitute a "new competitive franchise," when that phrase is read as a whole. Although a relocated Dealer would not be a "new franchise," it *would be newly competitive* with Competitor. Although ***Pryor*** recites the phrase "newly competitive franchise," it is silent on precisely what that phrase *means*, or how it would apply to a case like this one. ***Pryor*** is simply inapplicable to the facts of this case.

[3] Because the ***Pryor*** cases involved an altogether different set of circumstances, and because they do not stand for the proposition urged by the appellants, there is no merit in the appellants' argument that any ruling in this case that is "contrary" to ***Pryor*** should be given prospective application only. This ruling is not contrary to ***Pryor***.

55-17-114(c)(20) applies to this case, and therefore the Commission acted within its authority in subjecting GM and Dealer to a hearing on their proposed relocation under the auspices of the statute.

II.

GM and Dealer next argue that the Commission wrongly assigned them the burden of proof. They cite the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, which state in pertinent part:

> The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. The administrative judge makes all decisions regarding which party has the burden of proof on any issue.

Tenn. Comp. R. & Regs. 1360-4-1-.02(7). GM and Dealer assert that Competitor is the one "who seeks to change the present state of affairs" because, as GM's brief puts it, "in the normal course of ordinary business affairs favored by the Tennessee Constitution, [Dealer] is free to relocate." However, for many of the same reasons just discussed, this is at best a drastic oversimplification, and at worst an outright misstatement, of the law with regard to dealer relocations in Tennessee. Dealer may be theoretically "free to relocate," but it may only exercise this "freedom" if the procedures outlined in Tenn. Code Ann. § 55-17-101, *et seq.*, are followed. One of those procedures is the notice requirement, and the resulting Commission hearing in the event of an objection, in cases of potential intra-market competition among franchisees. This is all part of the "ordinary" process under Tennessee law. We hold that GM and Dealer "s[ought] to change the present state of affairs" when they proposed to relocate Dealer. In any event, according to 1360-4-1-.02(7), "[t]he administrative judge makes all decisions regarding which party has the burden of proof on any issue." We find no basis for holding that the administrative law judge abused the discretion granted by the subject regulation. We hold that there is no justification to reverse the Commission's decision in this regard.

III.

Having established that Tenn. Code Ann. § 55-17-114(c)(20) applies, and that the Commission did not err in setting the burden of proof, we turn to GM's various other arguments challenging the ruling. These require little discussion, due to the deferential standard of review in administrative matters. "When we are reviewing the evidentiary foundation of an administrative decision under Tenn. Code Ann. § 4-5-322(h)(5), we are not permitted to weigh factual evidence and substitute our own conclusions and judgment for that of the agency, even if the evidence could support a different determination than the agency reached." ***Ware***, 984 S.W.2d at 614.

GM contends that the Commission utilized the wrong "market area" in its analysis, firstly by defining the statutory "relevant market area" as equivalent to Competitor's "APR," and secondly by analyzing how well the existing arrangement was serving Competitor's "entire APR" instead of

how well it was serving the Mt. Juliet area specifically. We decline to second-guess the Commission on either of these points. There is substantial and material evidence in the record to support the Commission's ruling, Tenn. Code Ann. § 4-5-322(h)(5)(A), and there is no indication that the Commission acted arbitrarily, capriciously, or with a "clearly unwarranted exercise of discretion." Tenn. Code Ann. § 4-5-322(h)(4). We likewise reject the argument that the Commission's ruling was impermissibly speculative in its assessment of the impact a potential relocation might have on Competitor's sales. Any such determination is necessarily somewhat speculative, but we see no sign of any arbitrary or capricious action, and an abundance of material evidence to support the Commission's action. Nor are we willing to reverse the Commission's considered judgment on the basis of the appellants' generalized statements such as "[c]ustomer convenience is paramount," or their assertions that the proposed relocation is a "reasonable business judgment" by GM. Simply put, § 55-17-114(c)(20) empowers the Commission to take "final and binding action under the principles herein prescribed" regarding "the propriety of the granting of such additional dealerships." The Commission followed the statutory principles, as well as the guidelines laid down by the Supreme Court of this state in ***Capitol Chevrolet***, 645 S.W.2d 230. These specific legal imperatives cannot be brushed aside, nor the highly deferential standard of review in such cases done away with, by the recitation of broadly stated platitudes.

GM's argument that the Commission "adopted an anticompetitive standard" – in contravention, we are told, of various broad principles of law – is likewise without merit. Again, the Commission followed the law of the State of Tennessee as outlined in Tenn. Code Ann. § 55-17-101, *et seq.*, in particular § 55-17-114(c)(20). These specific, applicable statutory provisions cannot be overcome by citing general legal principles or case law from other states. In any case, the Commission was well within its broad discretion to take the action it did, and the required deference accorded to administrative decisions prevents us from second-guessing the Commission's weighing of the evidence. Finally, GM's contention that the Commission's interpretation of § 55-17-114(c)(20) renders the statute unconstitutionally void for vagueness is unsupported and wholly without merit.

IV.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellants, General Motors Corporation and Carl Black Chevrolet. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE